

BOIES SCHILLER FLEXNER LLP

David Boies (admitted *pro hac vice*)
 333 Main Street
 Armonk, NY 10504
 Tel: (914) 749-8200
 dboies@bsfllp.com

Mark C. Mao (CA Bar No. 236165)
 Beko Reblitz-Richardson (CA Bar No. 238027)
 44 Montgomery St., 41st Floor
 San Francisco, CA 94104
 Tel.: (415) 293-6800
 mmao@bsfllp.com
 brichardson@bsfllp.com

James Lee (admitted *pro hac vice*)
 100 SE 2nd St., 28th Floor
 Miami, FL 33131
 Tel.: (305) 539-8400
 jlee@bsfllp.com

Alison L. Anderson (CA Bar No. 275334)
 Samantha Parrish (CA Bar No. 318681)
 M. Logan Wright (CA Bar No. 349004)
 725 S. Figueroa St., 31st Floor
 Los Angeles, CA 90017
 Tel.: (213) 629-9040
 alanderson@bsfllp.com
 sparrish@bsfllp.com
 mwright@bsfllp.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL CATALDO,
 JULIAN SANTIAGO, and SUSAN LYNN
 HARVEY, individually and on behalf of all
 others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

SUSMAN GODFREY L.L.P.

Bill Carmody (admitted *pro hac vice*)
 Shawn J. Rabin (admitted *pro hac vice*)
 Steven M. Shepard (admitted *pro hac vice*)
 Alexander Frawley (admitted *pro hac vice*)
 1301 Avenue of the Americas, 32nd Floor
 New York, NY 10019
 Tel.: (212) 336-8330
 bcarmody@susmangodfrey.com
 srabin@susmangodfrey.com
 sshepard@susmangodfrey.com
 afrawley@susmangodfrey.com

Amanda K. Bonn, CA Bar No. 270891
 1900 Avenue of the Stars, Suite 1400
 Los Angeles, CA 90067
 Tel.: (310) 789-3100
 abonnn@susmangodfrey.com

MORGAN & MORGAN

John A. Yanchunis (admitted *pro hac vice*)
 Ryan J. McGee (admitted *pro hac vice*)
 201 N. Franklin Street, 7th Floor
 Tampa, FL 33602
 Tel.: (813) 223-5505
 jyanchunis@forthepeople.com
 rmcgee@forthepeople.com

Michael F. Ram, CA Bar No. 104805
 711 Van Ness Ave, Suite 500
 San Francisco, CA 94102
 Tel: (415) 358-6913
 mram@forthepeople.com

Case No.: 3:20-cv-04688-RS

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' MOTION *IN LIMINE*
 NUMBER 9 TO EXCLUDE ANY
 REFERENCE TO THE UNTIMELY
 DISCLOSED "PRIVACY AND TERMS"
 DOCUMENT**

The Honorable Richard Seeborg
 Courtroom 3 – 17th Floor
 Date: August 18, 2025

[PROPOSED] ORDER

Google has disclosed opening demonstratives that display and quote from a “Privacy and Terms” document. Google included the same document in a “demonstrative” video it seeks to play during its examination of the first scheduled witness, David Monsees. Plaintiffs move under Rule 37(c) to preclude Google from relying on this document at trial. The motion is granted.

More than four years ago, Plaintiffs served an interrogatory asking to Google to identify all public disclosures to users concerning Google’s collection and use of the at-issue app activity data. Google responded to this interrogatory—three different times—yet never identified this “Privacy & Terms” document. Nor did Google produce a standalone copy of the document.

Rule 37(c)(1) is an “automatic sanction” that “prohibits the use of improperly disclosed evidence.” *Merchant v. Corizon Health, Inc.*, 993 F.3d 733, 740 (9th Cir. 2021). Having failed to disclose the Privacy and Terms document, Google cannot rely on it at trial unless Google can prove substantial justification or harmlessness. *Yeti by Molly Deckers Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001).

Google can prove neither. Google has no excuse for omitting this document from its interrogatory responses and for failing to produce a standalone copy, particularly since this document is apparently so critical to Google’s defense that it plans to feature it within its opening statement. And the prejudice to Plaintiffs from Google disclosing for the first time on the eve of a trial a never-before-identified document would be extremely great.

Google is forbidden from showing the document to the jury (whether during opening statements, the “demonstrative” video during Mr. Monsees’ examination, or in any other way). Google is also forbidden from eliciting any testimony about the document’s contents.

IT IS SO ORDERED.

DATED: _____

The Honorable Richard Seeborg
Chief Judge of the United State District Court for the
Northern District of California